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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JOHN BOSHEARS, individually and on
behalf of all others similarly situated,

11 Plaintiff,

12 v.

13 PEOPLECONNECT, INC.,

14 Defendant.
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CASE NO. C21-1222 MJP

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS AND
COMPEL ARBITRATION

17 INTRODUCTION

18 This Matter comes before the Court on Defendant PeopleConnect, Inc.'s Motion to
19 Dismiss and Compel Arbitration. (Dkt. No. 85.) Having reviewed the Motion, Plaintiff John
20 Boshears's Response (Dkt. No. 88), the Reply (Dkt. No. 93), the Parties' presentations during
21 oral argument (Dkt. No. 95), and all supporting materials, the Court DENIES the Motion.
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BACKGROUND

A. PeopleConnect and the Classmates.com Terms of Service

PeopleConnect owns and operates Classmates.com, a website marketing access to and reprints of over 400,000 high school yearbooks (See First Amended Complaint (“FAC”) ¶ 19 (Dkt. No. 17).) Classmates.com customers access the services in three different ways: (1) as individual “Visitors,” who browse the website without registering for an account; (2) as “Free Members,” who create a Classmates.com account by submitting their information and agreeing to the company’s Terms of Service; and (3) as “Paid Members,” or Free Members who have then purchased a subscription to Classmates.com. (Declaration of Tara McGuane ¶ 5 (Dkt. No. 87).) Each tier affords the customer differing levels of access to the Classmates.com services—for example, Visitors are allowed to view “limited yearbook content,” while Free and Paid Members may freely browse yearbooks from their own graduating high school, search for other Free and Paid Members, and conduct text searches within yearbooks. (Id. ¶¶ 15–16.)

When registering as either a Free Member or a Paid Member, customers are presented with a registration page that requires them to provide certain information, including their graduating high school, year of graduation, first name, last name at time of graduation, and email address. (McGuane Decl. ¶ 8.) They also must select a username and password for their Classmates.com account. (Id.) Before selecting a large yellow button labeled “Submit,” customers are warned that by doing so they “agree to the Classmates Terms of Service and Privacy Policy,” and are provided a hyperlink to both documents. (Id.)

The version of PeopleConnect’s Terms of Service relevant to this dispute was made effective on November 9, 2021. (McGuane Decl. Ex. 1 (the “TOS”) at 11.) The second paragraph of the TOS warns users of the following:

By accessing and using the Websites and Services you are agreeing to the following Terms of Service. We encourage you to review these Terms of Service, along with the Privacy Policy, which is incorporated herein by reference, as they form a binding agreement between us and you. If you object to anything in the Terms of Service or the Privacy Policy, do not use the Websites and Services. Additionally, if you access and use the Websites and Services on behalf of or for the benefit of another, you are also agreeing to these Terms of Service on their behalf, and further affirm that you have the authority to so agree. Any reference to ‘you’ or ‘your’ shall also include any such person(s).

(TOS at 1.)

The TOS also contain an arbitration provision. (See generally, TOS § 12.) The arbitration provision requires arbitration of “any and all disputes” that may arise between the person using Classmates.com and PeopleConnect. (Id.) By agreeing to the TOS, customers also “independently waive any right to bring or participate in any class action for any Disputes,” (TOS § 12(E)), and affirm that dispute resolution “BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS OR REPRESENTATIVE ACTION. NEITHER PARTY SHALL BE A MEMBER IN A CLASS, CONSOLIDATED, OR REPRESENTATIVE ACTION OR PROCEEDING. . .” (TOS § 12(C)).

However, the TOS also allow for customers and their agents to opt-out of arbitration by notifying PeopleConnect via mail. (TOS § 12(D).) To be effective, an opt-out notice must be signed and “must include your name, address, phone number and email address(es) used to register with or use the Services, as well as the name, address, phone number and email address(es) of any person for whom you are opting out as their agent.” (Id.) The TOS contains the following two opt-out provisions:

- (1) “If opting out for yourself, this [opt-out] notice must be sent within thirty (30) days of your first use of the Services . . .”
- (2) “If opting out as an agent for another user, this [opt-out] notice must be sent within (30) [sic] days of that other user’s first use of the Services.”

1 (TOS § 12(D).)

2 **B. Boshears Engages Counsel to Investigate his Potential Claims**

3 Plaintiff Josh Boshears is a citizen of Indiana, where he resides and attended high school
 4 from 1995–98. (FAC ¶¶ 22, 37.) On or around October 11, 2021, Boshears received a mailed
 5 solicitation from Attorney Samuel Strauss informing him that Classmates.com may “contain[]
 6 information related to former students of Bedford North Lawrence High School who were in
 7 attendance in the years 1995–98. (Declaration of Benjamin T. Halbig Ex. 1 (Dkt. No. 86).) The
 8 solicitation includes language reading that “Turke & Strauss lawyers represent clients in class
 9 action lawsuits across the country.” (Halbig Decl. Ex. 1 at 5.) Prior to then, Boshears was not
 10 aware of Classmates.com, let alone a user of the website. (Halbig Decl. Ex. 2 (the “Boshears
 11 Dep.”) at 44:12–18.)

12 On October 18, 2021, Boshears and Attorney Strauss exchanged emails and phone calls
 13 regarding PeopleConnect’s business practices and Boshears’s “potential willingness to serve as a
 14 class representative” in a legal claim against the company. (See Halbig Decl. Ex. 4; Boshears
 15 Dep. at 53, 60.) Boshears assumed that prior to bringing a legal claim against PeopleConnect,
 16 someone would need to “check the website to make sure [his] information actually appeared” on
 17 Classmates.com. (Boshears Dep. at 56.)

18 That same day, Attorney Benjamin Osborn searched for Boshears’s information and
 19 likeness on Classmates.com. (McGuane Decl. ¶ 23.) To do so, Attorney Osborn used a Free
 20 Member Classmates.com account, which he had created on April 16, 2021, under the alias “Ben
 21 Whipple.” (Id. ¶¶ 21, 23.) Attorney Osborn took four screenshots of the Classmates.com website,
 22 including screenshots of pages containing Boshears’s information and photographs. (Halbig
 23 Decl. Ex. 5.) Attorney Strauss sent these screenshots to Boshears via email and asked Boshears
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1 to “confirm[], if in fact, these [were his] high school photos.” (Id.) Boshears confirmed that the
 2 photos featured his likeness and told Attorney Strauss that he “could review the information
 3 [from Classmates.com] with regards to pursuing a federal lawsuit,” and that he “could use those
 4 images . . . in support of [a potential legal] claim” against PeopleConnect. (Boshears Dep. at 57–
 5 58.)

6 Three days later, on October 21, 2021, Boshears signed an agreement to serve as a class
 7 representative in this case. (Declaration of Benjamin R. Osborn Ex. 2 (Dkt. No. 89).) When he
 8 signed the class representative agreement (“CRA”), Boshears understood that he was authorizing
 9 his counsel “[t]o research the use of [his] personal information pursuant to a class action lawsuit
 10 in federal court,” and that they would “do what was necessary in that investigation in order to
 11 bring [his] claims.” (Boshears Dep. at 64–65.) The CRA would only remain effective if
 12 Boshears’s claims proceeded as a class action lawsuit. (See CRA § 9.)

13 Attorney Osborn then created a new account on October 28, 2021, under the username
 14 Benjamin Osborn (the “Osborn Account”). (McGuane Decl. ¶ 24.) He then used the Osborn
 15 Account to search for Boshears’ information on Classmates.com and take screenshots of the
 16 resulting webpages. (Id. ¶¶ 25–27.) Finally, on that same day, Attorney Osborn sent
 17 PeopleConnect an opt-out notice containing his name, address, phone number, email address,
 18 and signature, along with a note that he wished to opt out “on behalf of anyone for whom I act as
 19 an agent, including clients I represent in my capacity as an attorney.” (Id. ¶ 24 & Ex. 3.)

20 **C. Boshears Files Suit Against PeopleConnect**

21 On October 29, 2021, Boshears filed this lawsuit, alleging that Classmates.com
 22 impermissibly used his persona to advertise its subscription services in violation of the Indiana
 23 Right of Publicity Act, Ind. Code. § 32-36-1-8; and as a common law tort of misappropriation of
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his name and likeness. (FAC ¶¶ 50-61.) Boshears seeks to represent a class of similarly situated Indianans. (*Id.* ¶¶ 42, 46.) The FAC includes at least four screenshots taken by Attorney Osborn while he used the Osborn Account. (McGuane Decl. ¶¶ 26–27; FAC ¶¶ 28, 33–35.)

D. PeopleConnect’s First Motion to Compel Arbitration and Ninth Circuit’s Review

PeopleConnect moved to dismiss Boshears’s Complaint in December 2021, arguing (among other things) that Boshears’s attorneys had bound their client to mandatory arbitration by virtue of accessing the Classmates.com service on his behalf. (*See* Dkt. No. 25 at 22–25.) Boshears reviewed both his opposition brief and PeopleConnect’s reply brief. (Boshears Decl. at 81, 84–85.) The Court granted in part PeopleConnect’s motion to dismiss, but declined to compel Boshears’s claims to mandatory arbitration. (Dkt. No. 46 at 15–19.)

On appeal, the Ninth Circuit vacated the Court’s denial of PeopleConnect’s arbitration demand and remanded the case back to the Court to “allow for arbitration-related discovery to proceed.” *Boshears v. PeopleConnect, Inc.*, No. 22-35262, 2023 WL 4946630, at *1 (9th Cir. Aug. 3, 2023). The panel provided the following guidance as to whether Boshears could have been bound by his attorney’s agreement to arbitrate:

First, the district court is instructed to apply Washington contract and agency law. If PeopleConnect can prove that Osborn became Boshears’s agent before Osborn created one or more of the member accounts, and if it can prove that Boshears knowingly accepted a benefit from, failed to repudiate, or exhibited conducting adopting that or those member account(s), Boshears may be bound by Osborn’s agreement to arbitrate.

Id. (cleaned up) (emphasis in original).

The Ninth Circuit also found that Attorney Osborn’s October 28, 2021, opt-out notice was “plainly ineffective as to Boshears because it did not include Boshears’s signature, name, address, e-mail address, or phone number.” *Boshears*, 2023 WL 4946630, at *1. The panel also noted that despite requesting that the Parties discuss PeopleConnect’s opt-out provisions

1 contained in Section 12(D) of PeopleConnect’s TOS, “neither party did so in a meaningful
2 manner.” Id., at *2.

3 On August 21, 2023, before the Ninth Circuit issued the mandate, Attorneys Borrelli and
4 Osborn sent an opt-out notice to PeopleConnect on behalf of themselves and Boshears. (See
5 Osborn Decl. Ex. 1 (the “2023 Opt-Out”).) The 2023 Opt-Out stated that Boshears “does not
6 agree to the terms or the arbitration agreement it contains,” and included the names, addresses,
7 phone numbers, email addresses, and signatures of Boshears, Attorney Borrelli, and Attorney
8 Osborn (Id.) The 2023 Opt-Out alleged that Boshears had “never used www.classmates.com,”
9 and that the opt-out was therefore “timely pursuant to the Terms PeopleConnect drafted.” (Id.)

10 **E. Proceedings After Remand**

11 After the Ninth Circuit remanded, the Court permitted the Parties to engage in limited
12 discovery related to arbitration. (Dkt. No. 63.) This Order relies on the facts developed during
13 arbitration-related discovery. The Court summarizes relevant timeline as follows:

- 14 • **October 11, 2021:** Boshears receives an initial outreach letter from Attorney
15 Strauss. (Halbig Decl. Ex. 1.) The letter indicates that his firm, Turke & Strauss,
16 “represent clients in class action lawsuits across the country.” (Id. at 5.)
- 17 • **October 18, 2021:** Boshears and Attorney Strauss discuss the former’s
18 willingness to serve as a class representative in a class action lawsuit against
19 PeopleConnect. (Halbig Decl. Ex. 4; Boshears Dep. at 53, 60.)
- 20 • **October 18, 2021:** Attorney Osborn searches for Boshears on Classmates.com
21 using the previously made Whipple Account. (McGuane Decl. ¶¶ 21–23.)
- 22 • **October 21, 2021:** Boshears signs the CRA and instructs his attorneys to research
23 the use of his likeness on Classmates.com for purposes of being a class
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representative. (Boshears Dep. at 64–65.) The CRA limits the scope of representation to class actions only. (CRA § 9.)

- **October 28, 2021:** Attorney Osborn creates the Osborn Account, searches for Boshears, captures at least four screenshots for use in the FAC, and sends PeopleConnect an opt-out on behalf of his clients. (McGuane Decl. ¶ 24–27.)
- **October 29, 2021:** Boshears files the FAC. (Dkt. No. 17.)

Now, PeopleConnect again moves to compel Boshears’s claims to arbitration. (Dkt. No. 85.)

ANALYSIS

A. Legal Standard

Section 2 of the Federal Arbitration Act (“FAA”) governs arbitration agreements in any contract affecting interstate commerce. See Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 119 (2001). The FAA “reflect[s] both a liberal policy favoring arbitration . . . and the fundamental principle that arbitration is a matter of contract.” AT & T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011) (cleaned up). “In line with these principles, courts must place arbitration agreements on an equal footing with other contracts . . . and must enforce them according to their terms.” Id. (cleaned up); see also Rent-A-Ctr., W., Inc. v. Jackson, 561 U.S. 63, 67 (2010).

The Court’s authority to compel arbitration arises under Section 4 of the FAA. See In re Van Dusen, 654 F.3d 838, 843 (9th Cir. 2011); 9 U.S.C. § 4. The party seeking to compel arbitration “bears the burden of proving the existence of an agreement to arbitrate by a preponderance of the evidence.” Norcia v. Samsung Telecomm. Am., 845 F.3d 1279, 1283 (9th Cir. 2017). The Court gives the party denying the existence of an agreement to arbitrate the benefit of all reasonable doubts and inferences, see Alarcon v. Vital Recovery Servs., Inc., 706 F.

App'x 394, 394 (9th Cir. 2017) (citing Three Valleys Mun. Water Dist. v. E.F. Hutton & Co., 925 F.2d 1136, 1141 (9th Cir. 1991)), and applies ordinary state law principles governing the formation of contracts. See First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995); Norcia, 845 F.3d at 1283.

B. Boshears's Counsel Opted Boshears Out of the Arbitration Agreement

Boshears argues that his claims cannot be sent to arbitration because his attorneys timely opted him out of the TOS's arbitration provision on August 21, 2023. (Opp. at 5–6, 9.) The Court agrees.

Contract interpretation is generally a question of law for the Court. Berg v. Hudesman, 115 Wn.2d 657, 663 (1990). Under Washington law, courts follow the “objective manifestation” theory of contracts. Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503 (2005). This requires courts to “determine the parties’ intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties.” Id. (internal citation omitted). Thus, when interpreting contracts, courts should “generally give words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent.” Id. at 504. If the language of a contract is clear and unambiguous, the Court must “enforce the contract as written; it may not modify the contract or create ambiguity where none exists.” Lehrer v. State Dep't of Social & Health Servs., 101 Wn. App. 509, 515 (2000). “Language is ambiguous if, on its face, it is fairly susceptible to more than one reasonable interpretation.” Mendoza v. Rivera-Chavez, 88 Wn. App. 261, 268 (1997) (quotation omitted). “Ambiguities must be construed against the drafter,” and courts should not read ambiguity into a contract “where it can reasonably be avoided by reading the contract as a

1 whole.” Spokane Airport Bd. v. Experimental Aircraft Ass’n, Chapter 79, 198 Wn.2d 476, 484
 2 (2021) (quoting McGary v. Westlake Inv’rs, 99 Wn.2d 280, 285–87 (1983)).

3 The Classmates.com TOS contains an arbitration provision. (See TOS § 12.) However,
 4 the TOS also provides parties with “the right to opt-out, for yourself and on behalf of anyone for
 5 whom you are acting as an agent, and not be bound by this arbitration provision. . . .” (Id. §
 6 12(D).) Specifically, parties may be opted-out of the agreement to arbitrate through the following
 7 two methods:

8 (1) “If opting out for yourself, this [opt-out] notice must be sent within
 9 thirty (30) days of your first use of the Services . . .”

10 (2) “If opting out as an agent for another user, this [opt-out] notice must
 11 be sent within (30) [sic] days of that other user’s first use of the
 12 Services.”

(TOS § 12(D).)

12 As a threshold matter, because the Parties dispute the meaning and application of the
 13 arbitration provisions, the Court must interpret the provisions before ruling on whether the 2023
 14 Opt-Out was effective. The Court finds that the first provision allows a user to opt-out of
 15 mandatory arbitration on their own behalf. See Boshears, 2023 WL 4946630, at *2 (discussing
 16 the first provision). An opt-out made under the first provision must be sent to PeopleConnect
 17 within 30 days of the user’s first use of Classmates.com. Id.; see also Knapke v. PeopleConnect,
 18 Inc., 38 F.4th 824, 836 (9th Cir. 2022) (“Under the Terms of Service, users may opt out of
 19 arbitration through written notice within thirty days of first using Classmates.com.”). The Court
 20 also finds that the second provision allows for an agent to opt-out of mandatory arbitration on
 21 behalf of their principal. Like the first provision, opt-outs under the second provision are time-
 22 restricted and only effective if made within 30 days of the other user’s first use of
 23 Classmates.com.
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1 Under this plain language interpretation, the Court finds that the 2023 Opt-Out
2 effectively and timely absolved Boshears of the TOS's requirement to arbitrate his claims. Under
3 the second provision, Attorneys Borrelli and Osborn acted as agents for another user, Boshears,
4 and opted out of the arbitration agreement his behalf. The opt-out included Boshears's signature,
5 name, address, e-mail address, or phone number—all information necessary to effectively opt his
6 claims out of arbitration. See, e.g., Boshears, 2023 WL 4946630, at *1. And Boshears has never
7 used Classmates.com, so the 30-day time limit written into the provision has yet to run. (See
8 Osborn Decl. Ex. 1 at 2 (“John Boshears has never used www.classmates.com”); see also Dkt.
9 No. 71-1 at 9 (responding to an interrogatory, Boshears averred he “never registered for a
10 Classmates Account, has never used a Classmates Account to Access the Classmates Website,
11 and has never searched for information about himself on the Classmates Website.”).)

12 PeopleConnect argues the opt-out is ineffective for two reasons, neither of which are
13 persuasive. First, PeopleConnect claims that the TOS must be read as a whole, including the
14 section defining “you” and “your” as someone who “access[es] and us[es] the Websites and
15 Service on behalf of or for the benefit of another.” (Reply at 10.) PeopleConnect claims by
16 incorporating the TOS's previous definition of “you” and “your,” the term “yourself” as used in
17 the first provision “includes both the user of Classmates.com and also any person for whom that
18 user was acting on their behalf while using Classmates.com,” meaning that “an agent must opt
19 out within 30 days of the agent's first use of Classmates.com on behalf of the principal.” (Id.)
20 Therefore, Boshears and/or his attorneys should have opted out within 30 days of Attorney
21 Osborn's first use of Classmates.com to investigate Boshears's claims.

22 This interpretation contradicts the plain language of PeopleConnect's own TOS. As an
23 initial matter, PeopleConnect's interpretation hinges on the previous definitions of “you” and
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1 “your,” but fails to account for the fact that the TOS does not define the term “yourself.” Without
2 a corresponding definition, the Court interprets “yourself” according to the ordinary, usual, and
3 popular meaning of the word. See Hearst, 154 Wn.2d at 504. “Yourself” is defined as “that
4 identical one that is you.” Yourself, Merriam-Webster Dictionary, available at
5 <https://www.merriam-webster.com/dictionary/yourself> (last visited Sept. 2, 2024). This
6 definition aligns with the Court’s conclusion that the first opt-out provision applies when a user
7 themselves (or the identical one that is them) seeks to opt-out of the arbitration agreement. This
8 reading reasonably preserves the second provision as the operative means by which an agent may
9 exercise their principal’s right to opt-out and not be bound by mandatory arbitration.

10 PeopleConnect attempts to salvage its interpretation of the opt-out provisions by
11 contemplating a scenario where the second provision would only be used when a “registered user
12 directly uses the services and then has an agent opt out for him or her.” (Reply at 10.) The Court
13 finds this interpretation unreasonable when compared to a plain language interpretation of the
14 opt-out provisions. See Kennewick Irrigation Distr. v. United States, 880 F.2d 1018, 1032 (9th
15 Cir. 1989) (“Preference must be given to reasonable interpretations as opposed to those that are
16 unreasonable”). PeopleConnect’s hypothetical scenario—where a first-time user of an online
17 yearbook aggregation service directs another to opt out of an adhesive agreement on their behalf
18 within thirty days—is not a common practice and is insufficient to justify PeopleConnect’s
19 strained interpretation. PeopleConnect’s interpretation would read ambiguity into a contract that
20 is clear on its face. See Spokane Airport, 198 Wn.2d. at 484. The Court declines to adopt
21 PeopleConnect’s unreasonable and unjustifiable interpretation of its own TOS.

22 Second, PeopleConnect argues that Boshears’ interpretation of the opt-out provision’s
23 timing element—where notice must be provided within 30 days of the user’s first use of the
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1 services— is incorrect. Specifically, PeopleConnect argues that allowing counsel to effectuate an
 2 opt-out on behalf of their client at any time simply because the client has never used
 3 Classmates.com creates an “impermissible loophole that would defeat the opt-out provisions.”
 4 (Reply at 10.) But any purported loophole arises out of PeopleConnect’s failure to define the
 5 term “user” in its own TOS. PeopleConnect alone is to be blamed for any purported “loophole.”
 6 And the Court does not find any logical reason why the term “user” should be construed as
 7 broadly as PeopleConnect suggests. The plain language of PeopleConnect’s own terms allow for
 8 an agent to opt out on behalf of another user within thirty days of the other user’s first use of
 9 Classmates.com. It is undisputed that when PeopleConnect received the August 2023 Opt-Out,
 10 Boshears has never used Classmates.com. The Court finds that Boshears opted-out of mandatory
 11 arbitration, and for this reason, the Court DENIES PeopleConnect’s motion to compel
 12 arbitration.

13 **C. Boshears Did Not Provide Counsel with Authority to Bind Him to Arbitration**

14 PeopleConnect next argues that Boshears gave his attorneys implied actual authority to
 15 bind him and his claims to mandatory arbitration. In the alternative, PeopleConnect claims that
 16 Boshears is bound to arbitrate because he ratified his attorneys’ acceptance of the TOS. The
 17 Court disagrees with both lines of argument, which are independent reasons for denial of the
 18 Motion.

19 On appeal, the Ninth Circuit provided the following guidance for determining the
 20 question of agency:

21 If PeopleConnect can prove that Osborn became Boshears’s agent before Osborn
 22 created one or more of the member accounts . . . and if it can prove that Boshears
 23 knowingly accepted a benefit from, failed to repudiate, or exhibited conducting
 24 adopting that or those member account(s), Boshears may be bound by Osborn’s
 agreement to arbitrate.

1 Boshears, 2023 WL 4946630, at *1 (cleaned up). The Court addresses each element—along with
 2 PeopleConnect’s implied actual authority argument—in turn.

3 **1. Timing of Agency Relationship**

4 PeopleConnect argues that the agency relationship between Boshears and his attorneys
 5 began on October 18, 2021, as a result of the initial conversation between Attorney Strauss and
 6 Boshears. The Court disagrees. The record before the Court does not demonstrate that Boshears
 7 exercised a material level of control over the actions of his attorneys on October 18, 2021. See
 8 Wash. Imaging Servs., LLC v. Wash. State Dep’t of Revenue, 171 Wn.2d 548, 562 (2011) (a
 9 showing of agency requires “facts or circumstances that establish that one person is acting at the
 10 instance of and in some material degree under the direction and control of the other.”) (cleaned
 11 up). Instead, it appears that the attorneys were acting in self-interest: ensuring that a potential
 12 client had a valid claim under Indiana law. Boshears testified that during his initial conversation
 13 with Attorney Strauss, he did not direct (or even discuss) confirmation as to whether his picture
 14 appeared on Classmates.com. (See Boshears Dep. at 55.) It is true that Boshears “assumed” that
 15 someone would need to check Classmates.com to confirm that his information was listed there,
 16 (see id. at 56), and he told Attorney Strauss that he “could review the information” regarding a
 17 potential claim, (id. at 58). But this is not enough to establish that on October 18, 2021,
 18 Boshears’ attorneys were acting “in some material degree under the direction and control,” of
 19 Boshears in such a manner sufficient to show the formation of an agency relationship capable of
 20 extinguishing Boshears’s right to pursue claims in court. See Knapke, 38 F.4th at 832 n.3 (citing
 21 Wash. Imaging, 171 Wn.2d at 562).

22 The Court finds that Boshears and his attorneys formed an agency relationship upon
 23 signing the CRA on October 21, 2021. This determination is of little consequence, however,
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1 because it is undisputed that the Osborn Account was created on October 28, 2021, at least a
 2 week after both the initial conversation and the signing of the CRA. (See Opp. at 11.) And the
 3 Parties agree that the account used by Attorney Osborn on October 18, 2021, to verify that
 4 Boshears's images appeared on Classmates.com was the "Whipple Account," which was created
 5 on April 16, 2021, well before Boshears was even aware of PeopleConnect.com. (See McGuane
 6 Decl. ¶¶ 21, 23–24; Opp. at 11 n.2.; Boshears Dep. 44:12–18.) Because the evidence shows that
 7 the Osborn Account was created after Attorney Osborn became Boshears's agent, the Court's
 8 analyzes the scope of Osborn's agency.

9 2. **The Scope of the Agency Relationship**

10 PeopleConnect insists that by instructing his attorneys to do what was "necessary" to
 11 investigate his claim, that Boshears provided them with the implied actual authority to agree to
 12 arbitration on his behalf. The Court disagrees.

13 Under Washington law, an agent acting under implied actual authority may "perform the
 14 usual and necessary acts associated with the authorized services" on behalf of their principal. See
 15 Knapke, 38 F.4th at 834 (quoting Hoglund v. Meeks, 139 Wn. App. 854, 867 (2007)). "Such
 16 usual and necessary acts can include agreeing to contracts." Id. (citing Chi. Title Ins. Co. v.
 17 Wash. State Off. of Ins. Comm'r, 178 Wn.2d 120, 141 (2013)).

18 The Court finds that the attorneys' agreement to arbitrate exceeded the bounds of their
 19 authority because it was not an act necessary to further Boshears's class action claims. Boshears
 20 signed the CRA which required his claims to proceed as a class action. (Osborn Decl. ¶ 2; CRA.)
 21 The CRA was effective only for the purposes of pursuing a class action—if class certification was
 22 denied or if Boshears sought to litigate his claims individually, he and his attorneys agreed they
 23 would need to enter into a new representation agreement. (CRA § 9.) This explicit requirement
 24

1 stands at odds with the class action waiver provision of the TOS which would require consumers
2 to bring their claims against PeopleConnect “ONLY IN AN INDIVIDUAL CAPACITY AND
3 NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR
4 REPRESENTATIVE PROCEEDING.” (TOS § 12(E).) And Boshears maintains that he had only
5 authorized his counsel to perform the usual and necessary acts related to “research the use of
6 [his] personal information pursuant to a class action lawsuit in federal court.” (Boshears Dep. at
7 64–65.) Because the representation agreement defined counsel’s role as limited to pursuing a
8 class action, the Court finds that Boshears’s attorneys did not have implied actual authority to
9 bind him to a waiver of any class claims.

10 Similarly, Boshears did not grant his attorneys implied actual authority to assent to
11 arbitration on October 18, 2021. The record shows that even during the preliminary
12 communications between Boshears and his counsel, Boshears expected his claims to proceed as a
13 class action in federal court. For example, during the initial call, Boshears told Attorney Strauss
14 that “he could review the information with regards to pursuing a federal lawsuit.” (See Boshears
15 Dep. at 58.) And the conversation began with an initial outreach mailer from Attorney Strauss
16 which contained notice (albeit at the bottom of the page) that “Turke & Strauss lawyers represent
17 clients in class action lawsuits across the country.” (Halbig Decl. Ex. 1 at 5.) Nothing in the
18 record now before the Court indicates that Boshears conveyed to his counsel the implied actual
19 authority to bind his nascent claims to arbitration in the three days before signing the CRA.

20 On this record, the Court does not find that Boshears conveyed to his attorneys the
21 implied actual authority to contract away his right to file claims in federal court. This is an
22 alternative and independent basis on which the Court DENIES the Motion.
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1 **3. No Ratification**

2 In the alternative, PeopleConnect claims that Boshears ratified his attorneys' acceptance
3 of the TOS on his behalf. The Court disagrees.

4 Even without a finding of implied actual authority, unauthorized acts of an agent may
5 still bind their principal should the principal later ratify the agent's actions. See Knapke, 38 F.4th
6 at 835. "To be charged by ratification with the unauthorized act of an agent, the principal must
7 act with full knowledge of the facts, accept the benefits of the acts, or without inquiry assume an
8 obligation imposed." Riss v. Angel, 131 Wn.2d 612, 636 (1997). The principal may ratify their
9 agent's unauthorized act in one of three ways: "(1) by receiving, accepting, and retaining benefits
10 from the contract; (2) by remaining silent, acquiescing, or failing to repudiate the contract; or (3)
11 by otherwise exhibiting conduct demonstrating adoption and recognition of the contract."
12 Knapke, 38 F.4th at 835 (citing Hoglund, 139 Wn.App. at 870 n.7).

13 PeopleConnect argues that Boshears ratified his attorneys' acceptance of the TOS in two
14 ways. First, PeopleConnect suggests that Boshears "received, accepted and retained" the benefit
15 of his attorneys' acceptance of the TOS by continuing to use the screenshots taken from the
16 Osborn Account. (Mot. at 16–17.) PeopleConnect does not claim that Boshears received any
17 benefit from his attorneys' agreement beyond the four screenshots included in the Complaint.
18 (See Mot. at 16–18) (concluding that Boshears's "use of the images . . . thus demonstrates that he
19 'received, accepted and retained' the benefit of the TOS.") The Court has previously declined to
20 recognize the use of screenshots as a ratifiable benefit. Order Denying in Part Mot. to Dismiss
21 (Dkt. No. 46), vacated in relevant part, appeal dismissed in part, No. 22-35262, 2023 WL
22 4946630 (9th Cir. Aug. 3, 2023) (citing Callahan v. PeopleConnect, Inc., No. 21-16040, 2022
23 WL 823594, at *1 (9th Cir. Mar. 18, 2022)). After the benefit of additional discovery and a
24

1 second round of briefing, the Court still finds the determination made by the Callahan court to be
 2 persuasive. Boshears could have only been alerted to the potential consequences of his attorneys’
 3 use of the screenshots well after they “had already been publicly filed [in his complaint] and had
 4 become part of the litigation.” See Callahan, 2022 WL 823594, at *1. The Court finds that the
 5 screenshots at issue here not a “benefit” the acceptance of which would be sufficient to trigger
 6 ratification.

7 Second, PeopleConnect argues that Boshears failed to repudiate his attorneys’ actions
 8 even after learning of their acceptance of the TOS and use of the screenshots. (Mot. at 17–18.)
 9 But PeopleConnect fails to show that Boshears ever had knowledge that his attorneys had
 10 accepted the TOS on his behalf. “Ratification by silence or acquiescence requires knowledge and
 11 either ‘acceptance of the benefits from the contract or prejudicial reliance by the other party.’”
 12 Knapke, 38 F.4th at 835 (citing Lockwood v. Wolf Corp., 629 F.2d 603, 609 (9th Cir. 1980)).
 13 Boshears testified that he was—and continues to be—unaware as to whether his attorneys ever
 14 agreed to the TOS on his behalf. (Boshears Dep. at 91.) And he similarly maintained that he had
 15 no knowledge of what his attorneys did to capture the screenshots of Classmates.com. (Id. at 88.)
 16 At best, PeopleConnect shows that Boshears reviewed both his opposition to the motion to
 17 dismiss, (id. at 81), and PeopleConnect’s reply brief (id. at 84, 85). That is not sufficient to show
 18 his attorneys accepted the TOS. PeopleConnect claims that Boshears’s testimony that he
 19 “reviewed [the motion to dismiss] filing[s], meaning he must have seen the argument in the
 20 motion that his attorneys had bound him to arbitrate.” (Mot at 13.) But the burden is on
 21 PeopleConnect to show “what [Boshears] knew and when [he] knew it.” Knapke, 38 F.4th at
 22 835. PeopleConnect does not meet that burden. Showing that Boshears’s review of two legal
 23 filings—particularly when those filings discussed myriad legal topics other than agency—is not
 24

1 equivalent to him having “learned of the consequences for his claims” or having possessed “full
2 knowledge of the facts.” (Mot. at 18.) Nor does it show that Boshears, as a layperson, “had
3 knowledge of facts that would have led a reasonable person to investigate further.” Henderson v.
4 United Student Aid Funds, Inc., 918 F.3d 1068, 1075 (9th Cir. 2019), as amended on denial of
5 reh’g and reh’g en banc (May 6, 2019). Indeed, it was not incumbent upon Boshears to have full
6 knowledge of the facts; as a putative class representative, his responsibilities extended to an
7 “interest[] on a continuous basis in the progress of the lawsuit,” but he was “not required to be
8 particularly sophisticated or knowledgeable with respect to the subject of the lawsuit.” (See
9 CRA, App’x A ¶ 6.)

10 The record before the Court does not demonstrate that Boshears had the requisite
11 knowledge of his attorneys’ actions such that would require repudiation. That is, PeopleConnect
12 fails to show that Boshears “knowingly accepted a benefit from [or] failed to repudiate” his
13 attorneys’ acceptance. See Boshears, 2023 WL 4946630, at *1 (emphasis added). On this record,
14 the Court finds that Boshears did not ratify his attorneys’ acceptance of the TOS on his behalf,
15 and so PeopleConnect cannot compel his claims to arbitration.

16 This is an alternative and independent basis on which the Court DENIES the Motion.

17 CONCLUSION

18 PeopleConnect cannot compel Boshears’s claims to mandatory arbitration because he
19 was opted out according to PeopleConnect’s own contract. But even if Boshears is still bound by
20 the terms, PeopleConnect fails to show that he conveyed sufficient authority to agree to arbitrate
21 his claims or that he ratified his attorneys’ unauthorized actions. For these three independent
22 reasons, the Court DENIES PeopleConnect’s Motion to Dismiss and Compel Arbitration.

23 The clerk is ordered to provide copies of this order to all counsel.
24

1 Dated September 5, 2024.

2 

3 Marsha J. Pechman
4 United States Senior District Judge